Supreme Court, U. S.
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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1975

No. 74-1582

Sherry White ..... *Appellant*

V.

Kenneth O. Hughes ..... *Appellee*

APPEAL FROM THE
SUPREME COURT OF ARKANSAS

MOTION TO DISMISS APPEAL

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JURISDICTIONAL STATEMENT

A.

This appeal is from the final judgment of the Arkansas Supreme Court in the case of *White v. Hughes*, 257 Ark. 627, 519 S.W.2d 70 (March 17, 1975). Appellant asserts jurisdiction is conferred by U.S. Code Annotated, Title 28, §1257 (2).

QUESTION PRESENTED

B.

The sole question presented is the constitutionality of the Arkansas Guest Statutes under the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

C.

This appeal arises out of an action for personal injuries filed by Sherry White against Kenneth O. Hughes. The accident occurred on August 25, 1970, in Little Rock, Arkansas. It is undisputed that at the time of the accident, Miss White was a social guest in an automobile being driven by Mr. Hughes.

Appellee does not believe it is relevant to the issues on appeal to recite in detail the facts of the accident. Suffice it to say that defendant denied the allegations of profanity and other misconduct detailed in appellant's brief and the jury found in his favor.

Appellant's counsel raised the constitutionality of the two Arkansas Guest Statutes by specific objections to two separate instructions which incorporated the provisions of the Act. These objections were overruled by the trial court whose ruling was affirmed by the Arkansas Supreme Court.

MOTION TO DISMISS

D.

Appellee moves the Court to dismiss the appeal on the grounds it does not present a substantial federal question.

Appellant's appeal is premised on the single contention that the Arkansas Guest Statutes contravene the Fourteenth Amendment of the United States Constitution. This precise contention as to the almost identical Connecticut statute was unanimously rejected by this Court in *Silver v. Silver*, 280 U.S. 117, 74 L. Ed. 221, 51 S. Ct. 57.

Although appellant seeks to distinguish the *Silver* case on the basis that her attack is "broader" than that which was made in *Silver*, it is obvious that to grant the relief sought by appellant this Court will have to overrule its prior decision. Appellant argues that *Silver* should be overruled on the basis that the Supreme Courts of four states have, in testing their respective guest statutes under the relevant state constitutional provisions, found them in violation of varying constitutional prohibitions. Appellee recognizes that under our federal system of government, a state in construing its own constitution may apply broader or more liberal tests of constitutionality than are imposed upon them by the Fourteenth Amendment. This is obviously the approach taken by the Supreme Courts of California, Kansas, North Dakota and Idaho. However, just as clearly, the overwhelming majority of the Supreme Courts in those states which have enacted guest statutes have adopted verbatim the rationale of *Silver*, in regard to both State and Federal constitutional provisions. See, e.g., *Keasling*

v. Thompson, 217 N.W.2d 687 (Iowa, 1974); *Duerst v. Limbocker*, 525 P. 2d 99 (Ore., 1974); *Justice v. Gatchell*, 325 A. 2d 97 (Del., 1974); *Richardson v. Hanson*, 527 P. 2d 536 (Col., 1974); *Cannon v. Oviatl*, 520 P. 2d 883 (Utah, 1974); *Tisko v. Harrison*, 500 S.W.2d 565 (Tex. Civ. App., 1973); *Delaney v. Badame*, 274 N.E.2d 353 (Ill., 1973); *Naudzius v. Lahr*, 253 Mich. 216, 234 N.W. 581; *Smith v. Williams*, 51 Ohio App. 464, 1 N.E.2d 643; *Tulghum v. Bleakley*, 177 S.C. 286, 181 S.E. 30; *Roberson v. Roberson*, 193 Ark. 669, 101 S.W.2d 965; *Shea v. Olsen*, 175 Wash. 143, 53 P. 2d 615.

As to appellant's contention that the Court should reconsider *Silver* on the basis of the new, broader attack typified by *Brown v. Merlo*, 8 Cal. 3d 855, 106 Cal. Rept. 388, 506 P. 2d 212 (1973), appellee respectfully submits that the recent dismissal of the appeal to this Court in the case of *Cannon v. Oviatl*, 520 P.2d 883 (Utah, 1974), *appeal dismissed*, 42 L. Ed. 2d 37, 95 S. Ct. 24, is clear authority for a dismissal in this case. In *Cannon*, the Utah Supreme Court examined the *Brown v. Merlo* rationale and concluded that it was not in harmony with the requirements of the Fourteenth Amendment. The Court noted in pertinent part:

> "The use of the motor vehicle upon the highways has validly been subjected to legislative regulation. The presence of the guest in this area would itself create a basis for a distinct classification from other guests located where there was no overwhelming public interest. The motor vehicle exerts a dominant influence in contemporary society and its use creates many economic and social problems. In a state such as Utah a significant portion of our economic resources must be devoted to the construction and maintenance; the economic burden

> bears a direct relationship to the number of vehicles and the total cumulative mileage on the highways each year. The guest statute encourages hospitality and directly effects the number of vehicles present on the highways; thus avoiding traffic congestion and wear on the surface of the roadway. The guest statute promotes the conservation of petroleum and other natural resources consumed in highway travel. The suggestion that the burden of the injured should be borne by the motoring public through liability insurance is an economic and social solution that is properly subject to legislative determination. The legislature is the proper forum to consider the alternative problem of the injured guest."

The plaintiff appealed to this Court from the above decision. On October 15, 1974, the appeal was dismissed on the ground it did not present a substantial federal question, (42 L. Ed. 2d 37, 95 S. Ct. 24). Appellee respectfully submits this dismissal is a clear reaffirmance by this Court of the long-standing and well-recognized rationale of *Silver*, and that this appeal should, likewise, be dismissed.

Respectfully submitted,

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